

## COMMENTS ON 'RAJASTHAN VIRTUAL ONLINE SPORTS (REGULATION) BILL, 2022'

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### A. PRELIMINARY:

This document captures our comments on the Rajasthan Virtual Online Sports (Regulation) Bill, 2022 (**the Bill**). Broadly, we recommend:

1. Creating a more inclusive definition of online games, to include poker, rummy, and casual games (e.g., arcade, board games, quizzes, etc.).
2. Broadening the definition of 'esports' and removing the requirement that only esports recognised by international/domestic esports federations can be offered in Rajasthan
3. The Bill should be self-contained and not place reliance on judicial determination of whether a game is a game of skill or not.
4. Ensuring independence of self-regulatory organisations (**SROs**) for player safety and for harmony among licensed operators of virtual online sports (**VOS**) in Rajasthan.
5. VOS providers should also be allowed to appeal the SRO's orders to the Rajasthan Virtual Online Sports Commission (**the Commission**).
6. Clarifying what is meant by 'class' of VOS, as the Bill envisages SROs for each 'class' of VOS.
7. Providing a transition period for VOS providers operating in Rajasthan to get a license.

### B. SPECIFIC COMMENTS:

#### 1. The scope of the law should be expanded to cover other online real-money games:

##### 1.1. Key issues:

1.1.1. Currently, the Bill only seeks to regulate esports and fantasy sports and excludes other skill-based games played for real money like card, arcade, quiz, and board games. Excluding games of skill other than VOS, creates a dual regime for games of skill, where companies will have to get licenses for VOS, but not for other games of skill. This will mean that other games of skill played for real money, do not have to adhere to minimum standards for player safety (e.g., grievance redressal, or responsible game play practices like 'time limits' and 'spending limits', which the industry led self-regulatory organisations may require for VOS providers).

##### 1.2. Our recommendations:

1.2.1. The Bill should be inclusive for all digital games of skill played for real money so that there is one standard regime for all of such games. We recommend a definition that includes all digital games and that provides the opportunity to recognise all skill-based online games and sports, as they evolve in form.

1.2.2. Digital games are evolving and specifically listing games in the Bill may repeat the challenges faced in determining permissibility of newer digital games. Therefore, to encourage innovation, and support recognition of newer formats, we recommend that the Bill allow games that are predominantly skill based. And that the Commission and the SROs work to periodically identify skill elements that guide their recognition of newer digital games. SROs can give gaming companies the opportunity to demonstrate the skills needed to play their games, thereby encouraging innovation while also ensuring that only games of skill are offered in the state This will enable the government to permit new games of skill, as the SROs and the Commission, evaluate and certify them.

#### 2. The present definition of 'esports' in the Bill excludes esports recognised and played globally.

##### 2.1. Key issues

- 2.1.1. In the Bill, there is an emphasis on esports being connected to games and sports played in the real world. For instance, 'esports' must be 'simulated versions' of real-world sports like Cricket, Kabbadi, Football, etc.<sup>1</sup> This would exclude certain types of internationally recognised and played esports; including those recognised by the Olympic Council of Asia and Asian Games 2022.<sup>2</sup>
- 2.1.2. Our analysis of the esports market indicates that esports broadly fit into two categories:
- Typically understood esports like real-time strategy games (**RTS**), first-person shooter games (**FPS**), multiplayer online battle arena games (**MOBA**). Examples include, League of Legends, Hearthstone, Counter Strike, Call of Duty.<sup>3</sup> It is important to note that League of Legends, and Hearthstone have been recognised by the Olympic Committee and will be played at the Asian Games 2022. India will be sending a delegation of athletes for these esports.
  - Esports like Temple Run, Candy Crush, Grand Turismo, Pokémon Go, and Fruit Ninja, (**Other Esports**), which are popular in India and abroad. These esports require players to use their skills to play.<sup>4</sup>
- 2.1.3. These esports have international tournaments, international and domestic viewership in India, and are skill-based. Indicatively, the skills involved in playing RTS, FPS, MOBA, and Other Esports include-
- Endurance and strength (e.g., for moving fingers continuously to control the game with a mouse and/or keypad, or gaming console),<sup>5</sup>
  - Strategy, quick decision making (e.g., to determine their offense and defence strategies and game plan in League of Legends. Or to decide what cards to play and how to defeat the opponent using the powers and the cards at play in Hearthstone).<sup>6</sup>
  - Hand eye-coordination, quick finger movements (e.g., to throw poke balls to catch Pokémon in Pokémon Go).<sup>7</sup>
  - Focus and attention (e.g., to jump to new subway cars in Subway Surfer),<sup>8</sup>
  - Pattern recognition (e.g., to match pieces of a similar colour or shape of candy in Candy Crush).<sup>9</sup>
- 2.1.4. However, these esports do not have a 'simulation' of 'real-life' sports or games that have been nationally or internationally recognised. This definition of 'esports' will hinder the ability of the Bill's

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<sup>1</sup> See proviso (i) to Clause 2(j) which defines 'esports platforms'. See also the definition of 'esports' (Clause 2(h) of the Bill)

<sup>2</sup> <https://olympics.com/en/news/asian-games-2022-indian-esports-team-athletes-qualified-full-list>

<sup>3</sup> **League of Legends**: World Final in 2020 at peak was witnessed by 3.8 million people worldwide. Its major tournaments are League of Legends Indi Champions Cup, European Masters Spring, Hextech Series. **Counter Strike**: For Taiwan Excellence Gaming Cup, Dota 2 and CS: GO had a combined viewership of 7700 in India but no specific data for Counter Strike alone. Its major tournaments are Ultimate Battle, COBX Masters, U Cypher. **Call of Duty**: 256 teams participated in COD Reload 1.0. Call of Duty Mobile India Invitational 2020 witnessed 13,944 at peak viewership. Its major tournaments are Gamerji Esports Tournament, COD Reload 1.0, COD World Championship. **Hearthstone**: witnessed a total viewership of 89,000 people globally for Hearthstone World Championship 2020. Tirth Mehta won a Bronze Medal at the 2018 Asian Games.

<sup>4</sup> **Temple Run**: has 2.5 million daily active users in India. Its major tournament is Biannual Temple Run Tournament. The most popular player is Vikas A. who won 58,321,618 points in 1 game. **Candy Crush**: 9.2 million worldwide play Candy Crush and is also popular in India. It was in the FORBES-India TRA Research List of Most Respected Consumer Tech Brands. Sukanta\_Biswas, Kiara\_wael with 39580 points and mystical misty are top ranked Indian players. **Gran Turismo**: reached 47.2 million viewers globally. Its major tournament is GT Sport FIA Online Championship. **Pokémon Go**: Pokémon Go downloads crossed 1 billion globally. In India, 3.3 million downloads were recorded in 2019. Its major tournaments are The Silph Arena, Prismatic Cup and Deepam Cup.

<sup>5</sup> <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0237584>

<sup>6</sup> <https://doublexp.com/courses/training/lesson/62>

<sup>7</sup> <https://www.koco.com/article/pokemon-go-helps-oklahoma-occupational-therapy-patients/4310626>

<sup>8</sup> <https://www.livemint.com/Technology/kytrLoAEc99zUPWgzo0EeN/Play-more-video-games-for-better-health.html>

<sup>9</sup> <https://karlkapp.com/game-element-pattern-recognition/>

industry-led SROs<sup>10</sup> to evaluate, certify, and approve new esports for Rajasthan.<sup>11</sup> In turn, this will stifle innovation of new esports that test players' abilities in new settings.

2.1.5. The Bill also does not clarify what criteria the government will use to determine whether a 'sports federation'<sup>12</sup> is internationally or domestically accredited. The International Olympic Committee is yet to recognise a sports federation as an international sports federation for 'esports'. Key contenders for recognition include the 'International e-sports Federation' (South Korea-based),<sup>13</sup> and the 'Global Esports Federation' (Singapore-based).<sup>14</sup> Even the Ministry of Youth and Sports Affairs, is yet to recognise any Indian organisation as national sports federation for esports, under the National Sports Code, 2011.

## 2.2. **Our recommendation:**

- 2.2.1. We recommend a definition that allows more esports to be recognised and provided in Rajasthan, to accommodate new esports.
- 2.2.2. We also recommend removing the requirement of a game to be a simulation of a real-life sport or game, for it to be considered an 'esport'. A deeper analysis of the sampling of esports discussed above will show that the following features determine if an online game is an esport: (a) competitiveness; (b) fixed rules and regulations; (c) presence of skill; and (d) using digital or information and communication technology. Therefore, esports are more than just those rooted in reality.
- 2.2.3. The Bill should remove clause 2(j)(ii) from the Bill, which mandates recognition by an international or domestic sports federation as a pre-requisite for it to be offered in the state.

## 3. **The Bill should be self-contained and not place reliance on judicial determination of whether a game is a game of skill or not.**

### 3.2. **Key issues:**

- 3.2.1. The Bill states that 'derived formats' are virtual online sports with fantasy-based selection that are recognised by a 'court of competent jurisdiction' or certified by a self-regulatory organisation.<sup>15</sup> The Bill does not define 'courts of competent jurisdiction'.
- 3.2.2. However, relying or allowing self-regulatory organisations to rely on court decisions while determining if a game is a VOS, may cause problems. In India, there are instances where different high courts have interpreted the same game differently. High Courts use the 'dominant factor test' laid out by the Supreme Court to demarcate games between skill and chance.<sup>16</sup> Here, the dominating factor (skill or chance) of 51% in a game decides whether it is based on skill or chance. The application of this test has led to different outcomes by different high courts for the same game. For example, the Karnataka High Court has found that poker is a game of skill based on bluffing and deception being the dominant

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<sup>10</sup> See, Clause 12 - Administration and Regulation of Virtual Online Sports.

<sup>11</sup> See, Clause 13(c), Roles and Functions of Self-Regulatory Organisation and Clause 14(1) Virtual Online Sports Certification,

<sup>12</sup> See, clauses 2(h) and 2(j)(ii)

<sup>13</sup> <https://iesf.org/>

<sup>14</sup> <https://www.forbes.com/sites/ellenzaviani/2021/05/11/whos-is-snobbing-who-esports-the-ioc-and-international-federations-need-to-listen-to-each-other-closely/?sh=33b152c288b4> and <https://www.globalesports.org/partners>

<sup>15</sup> See, Clause 2(f) of the Bill

<sup>16</sup> State of Andhra Pradesh v. K. Satyanarayana & Ors. 1968 SCR (2) 387

skill-based elements.<sup>17</sup> On the other hand, the Gujarat High Court has found poker to be a game of chance, finding bluffing and deception to be chance elements.<sup>18</sup>

### **3.3. Our recommendation:**

- 3.3.1. The Bill ought to be a self-contained piece of legislation which should itself (a) provide an inclusive definition of digital games as discussed in para 1 of this note; (b) arrive at a list of criteria that should be considered for listing games as games of skill in the state. This will mitigate risk of courts arriving at differing decisions with regard to the same game formats.
- 3.3.2. To ensure new formats are evaluated fairly, we recommend that the Rajasthan government relies on a combination of factors to determine if a game can be offered in the state- (a) expert advice (e.g., players demonstrating the skills required for playing a proposed new format); (b) statistical analysis; and (c) international developments (e.g., recognition of an esports or fantasy sport by an international sports federation).

## **4. The Bill should clarify how the SROs will be independent to ensure harmony in the industry and safety to players:**

### **4.2. Key issues:**

- 4.2.1. SROs under the Bill have a wide array of roles that will directly impact the online gaming ecosystem in the state. They will exercise oversight, partake in grievance redressal through an ombudsman and decide if newer formats can be offered in the state. The Bill currently suggests that 'Rajasthan Virtual Online Sports Commission' will recognise SROs, whose members collectively service "*the majority of the pay-to-participate registered users in India.*"<sup>19</sup> This could lead to exclusion of SROs whose members do not service a majority of the pay-to-participate registered users.<sup>20</sup> The term 'majority of the pay-to-participate registered users' could be an issue, as there are VOS providers in India who offer more than one type of digital game. They will have more pay-to-participate registered users than say a digital game provider who offers only esports, or only fantasy sports.<sup>21</sup> Additionally, it is unfair to assume that by having a majority of pay to participate registered users, the VOS provider has enough expertise to perform the roles and functions listed in the Bill. Further, the requirement of having been in existence for a minimum period of three years, precludes the formation of newer industry led bodies and will bias the system in favour of pre-existing associations. This impacts the industry participant's freedom to form associations of their choosing and may open up the Bill to constitutional challenge.
- 4.2.2. This could also pose problems for building player trust and industrial harmony. In April 2022, reports emerged that three major pay-to-participate online gaming companies left the 'Federation of Indian Fantasy Sports' (FIFS).<sup>22</sup> One of the alleged reasons for this was internal dissent towards FIFS allowing members to try different formats of fantasy sports (apart from the Dream11 format recognised by the

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<sup>17</sup> Indian Poker Association (Ipa) vs the State of Karnataka, W.P. No.s 39167 TO 39169 of 2013

<sup>18</sup> Dominance Games Pvt. Ltd. v. State of Gujarat & Ors, Special Civil Application No. 6903/2017

<sup>19</sup> See, Clause 12(5)(d)

<sup>20</sup> See, Clause 12(5)(d)

<sup>21</sup> See, Clause 12(1) and (2)

<sup>22</sup> <https://www.financialexpress.com/brandwagon/the-fifs-fallout-why-mpl-myteam11-and-my11circle-left-the-industry-body/2501946/>

Supreme Court of India).<sup>23</sup> There were also allegations of bias exhibited by FIFS towards the founding member, Dream11.<sup>24</sup>

- 4.2.3. Independence is crucial to (a) build public trust; (b) maintain industry harmony; and (c) carry out the responsibilities under the Bill fairly. The Bill is currently silent on the fact that SROs must ensure independence and fairness in fulfilling its responsibilities.<sup>25</sup>

#### **4.3. Our recommendations:**

- 4.3.1. We recommend removing the requirement for SROs to be in existence for a minimum of three year.
- 4.3.2. We recommend that the Bill adopt the rules related to forming a self-regulatory body similar to those listed in the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 (**IL Rules**).<sup>26</sup> The IL Rules call for (a) the creation of an 'independent body' constituted by publishers of online content or their associations;<sup>27</sup>(b) the body to be headed by a retired judge of a high court or the supreme court of India or an eminent person from certain fields;<sup>28</sup> and (c) have 6 people who are experts in certain fields.<sup>29</sup>
- 4.3.3. We also recommend that VOS providers should be allowed to choose which SRO they wish to join, akin to what is allowed in the IL Rules.<sup>30</sup>
- 4.3.4. Additionally, since SROs are performing multiple functions, we recommend the SRO set up committees for each role (e.g., an oversight committee, the ombudsmen, and an evaluation committee). This would be in line with the NITI Aayog's recommendations for regulating online fantasy sports platforms.<sup>31</sup> Each committee should be independent and no representative of a company with a license to operate in Rajasthan, should be a part of them. Each body should have periodic democratic elections. The committees can include- (a) an oversight committee with people who have experience in administration and governance; (b) an ombudsmen with people with experience in consumer welfare, adjudication, and dispute resolution; and (c) an evaluation committee with people experienced in mathematics, economics, law, and policymaking to put in place an objective metric of assessment for each new virtual online sport.

#### **5. The adjudicatory mechanism laid out in the Bill needs to be clarified:**

##### **5.2. Key issues:**

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<sup>23</sup> Special Leave Petition (Civil) Diary No(s). 18478/ 2020. See also: <https://www.livellaw.in/news-updates/supreme-court-dream-11-fantasy-sports-game-not-gambling-178915>

<sup>24</sup> <https://www.financialexpress.com/brandwagon/the-fifs-fallout-why-mpl-myteam11-and-my11-circle-left-the-industry-body/2501946/>

<sup>25</sup> See, Clause 13 - Roles and Functions of Self-Regulatory Organisation

<sup>26</sup> See Rule 12 (1) and (2), Chapter III: Self- Regulating Mechanism Level II, [https://www.meity.gov.in/writereaddata/files/Intermediary\\_Guidelines\\_and\\_Digital\\_Media\\_Ethics\\_Code\\_Rules-2021.pdf](https://www.meity.gov.in/writereaddata/files/Intermediary_Guidelines_and_Digital_Media_Ethics_Code_Rules-2021.pdf)

<sup>27</sup> Rule 12(1), Chapter III: Self- Regulating Mechanism Level II, [https://www.meity.gov.in/writereaddata/files/Intermediary\\_Guidelines\\_and\\_Digital\\_Media\\_Ethics\\_Code\\_Rules-2021.pdf](https://www.meity.gov.in/writereaddata/files/Intermediary_Guidelines_and_Digital_Media_Ethics_Code_Rules-2021.pdf)

<sup>28</sup> Rule 12(10) – the eminent person must be from either media, broadcasting, entertainment, child rights, human rights or such other relevant field, Chapter III: Self- Regulating Mechanism Level II, [https://www.meity.gov.in/writereaddata/files/Intermediary\\_Guidelines\\_and\\_Digital\\_Media\\_Ethics\\_Code\\_Rules-2021.pdf](https://www.meity.gov.in/writereaddata/files/Intermediary_Guidelines_and_Digital_Media_Ethics_Code_Rules-2021.pdf)

<sup>28</sup> Rule 12(1), Chapter III: Self- Regulating Mechanism Level II,

<sup>29</sup> Rule 12(10) – the eminent person must be from either media, broadcasting, entertainment, child rights, human rights or such other relevant field, Chapter III: Self- Regulating Mechanism Level II, [https://www.meity.gov.in/writereaddata/files/Intermediary\\_Guidelines\\_and\\_Digital\\_Media\\_Ethics\\_Code\\_Rules-2021.pdf](https://www.meity.gov.in/writereaddata/files/Intermediary_Guidelines_and_Digital_Media_Ethics_Code_Rules-2021.pdf)

<sup>29</sup> Rule 12(1), Chapter III: Self- Regulating Mechanism Level II,

<sup>30</sup> See Rule 11(2)(d), Chapter III: Self- Regulating Mechanism Level II, [https://www.meity.gov.in/writereaddata/files/Intermediary\\_Guidelines\\_and\\_Digital\\_Media\\_Ethics\\_Code\\_Rules-2021.pdf](https://www.meity.gov.in/writereaddata/files/Intermediary_Guidelines_and_Digital_Media_Ethics_Code_Rules-2021.pdf)

<sup>31</sup> NITI Aayog's Guiding Principles for Regulation of Online Fantasy Sports Platforms

[https://www.niti.gov.in/sites/default/files/2020-12/FantasySports\\_DraftForComments.pdf](https://www.niti.gov.in/sites/default/files/2020-12/FantasySports_DraftForComments.pdf)

- 5.2.1. The Bill presently allows the SROs, the Commission, and an 'adjudicating officer' to exercise oversight and enforce the provisions of the Bill.
- 5.2.2. SROs have the power to levy penalties and fines for its segment of VOS.<sup>32</sup> SROs also have the power to issue directions and orders to make VOS operators comply with SRO guidelines (e.g., codes of ethics).<sup>33</sup> An SRO ombudsmen is only empowered to hear disputes between license holders, and between license holders and players.<sup>34</sup>
- 5.2.3. VOS operators can appeal orders of the ombudsmen to the Commission.<sup>35</sup> However, there is no provision for VOS operators to appeal orders, fines, and penalties, issued by the SRO to the Commission.

### 5.3. **Our recommendations:**

- 5.3.1. The Bill should also allow the Commission to hear appeals by digital gaming providers against the orders passed by the SRO. The Bill presently indicates that Commission can hear appeals from the SRO's ombudsmen.<sup>36</sup>

## 6. **The Bill should clarify what is meant by 'class' of VOS:**

### 6.2. **Key issues:**

- 6.2.1. The Bill envisages SROs for each class of VOS.<sup>37</sup> However, the Bill does not clarify what it means by "class" of VOS. This could create issues in decided which digital games fall under a particular SRO's scope. For example, are all fantasy sports in one 'class'? Or are fantasy cricket and fantasy football in different 'classes' of VOS? Would poker, rummy, and other card-based games be considered a 'class' of digital sports, or would each be an independent 'class'?
- 6.2.2. With casual games and esports the problem of assigning a 'class' intensifies. This is because with casual games and esports, the 'publisher' of the digital game in effect is the sole creator (e.g., of the rules of gameplay), administrator (e.g., of competitions), and provider (e.g., through gaming consoles or mobile applications).<sup>38</sup>
- 6.2.3. For example, our analysis of market practice indicates that an esport like Hearthstone, is published (i.e., created, offered, and administered) by Blizzard Entertainment Inc., who also organises the 'Hearthstone World Championship'.<sup>39</sup> Would 'Hearthstone' be a separate 'class' of VOS under the Bill? If yes, it would mean that there would be different SRO for each digital game like 'Hearthstone'. It is pertinent to note that digital games like Hearthstone will be played at the Asian Games 2022, as an esport, thus raising the stakes on the need for clarity for their governance and offering.<sup>40</sup>
- 6.2.4. Additionally, the requirement for a single SRO for each class of digital game may restrict the choice of SRO available to digital game providers in the state.

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<sup>32</sup> See Clause 13(e) (e) to levy penalties and fines for the particular segment of the industry and all such penalties and fines collected thus shall be credited to the consolidated funds of the State.

<sup>33</sup> See clause 13(b) - (b) to issue- directions or orders for compliance with the code of ethics and governance;

<sup>34</sup> See clause 13(d) - (d) to constitute an office' of Ombudsman that shall act as a Dispute Redressal body for disputes between the Licensees and for disputes between the users and the Licensee; and

<sup>35</sup> See clause 18(1)(i)

<sup>36</sup> See clause 18(1)(i)

<sup>37</sup> See, Clause 12 (1) and (2)

<sup>38</sup> <https://www.hp.com/us-en/shop/tech-takes/game-developers-vs-game-publishers>

<sup>39</sup> <https://playhearthstone.com/en-us/esports/tournament/world-championship-2021/#:~:text=Dec%2019%2C%202021-Overview,of%20a%20%24500%2C000%20prize%20pool!>

<sup>40</sup> <https://www.talksport.com/news/asian-games-2022-will-feature-8-esports-titles-including-dota-2-hearthstone-and-street-fighter/>



**6.3. Our recommendations:**

- 6.3.1. We recommend that the Bill clarify what is meant by 'class' of digital games, as this is critical to the offering, growth, and oversight of the digital gaming industry.
- 6.3.2. We recommend surveying the market to understand the kinds of digital games on offer, the roles played by game developers and game publishers, and the nature of gameplay in these digital games, both in India and globally. This will help the Rajasthan government to qualify what digital games will fall into each 'class', and thus be overseen by a particular SRO.
- 6.3.3. We recommend that the Bill allow more than one SRO for each class of digital game, so as to enable choice for digital games' providers.

**7. The Bill should give digital gaming companies already operating in Rajasthan a transition period to get a license:****7.2. Key issues:**

- 7.2.1. The Bill currently does not specify whether gaming companies will get time to comply with its requirements, and whether they will be able to continue providing their games while applying for licenses.
- 7.2.2. The government of Rajasthan will need time to set up the Commission and for the Commission to recognise SROs. In the absence of SROs and the Commission, there will be a vacuum for dispute resolution, grievance redressal, and standard setting for responsible gameplay.
- 7.2.3. This lack of clarity will reduce safety to players and disrupt business operations of digital gaming operators

**7.3. Our recommendations:**

- 7.3.1. Digital gaming companies should get a reasonable transition period from the date of setting up of the Commission to comply with the requirements of the Bill, (e.g., get a license).
- 7.3.2. In the interim, digital gaming companies should be allowed to continue offering their games in Rajasthan.